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STATE OF ALABAMA

APR 20 1990

90-00225

Honorable H. R. Caton  
Mayor  
P.O. Box 296  
Harpersville, Alabama 35078

Municipalities - Water and Sewer  
Boards - Officers and Offices -  
Compensation

Under Section 11-50-313, city  
council member may serve as  
member of board of water system.  
Number and compensation of board  
members discussed.

Dear Mayor Caton:

This opinion is issued in response to your request for an  
opinion from the Attorney General.

QUESTIONS

1. May elected officials be appointed to the water works board?
2. How many permanent members may be appointed to the water works board?
3. May an elected member of the town council serve as a supervisor of the water works board with compensation?
4. May an elected member of the town council serve as a superintendent of the water works board with compensation?
5. May an elected member of the town council serve as a chairman of the water works board?

6. May a council member receiving compensation as such also receive compensation from the water works board?

7. May one person serve as supervisor, superintendent and chairman of the water works board, receive compensation therefor and also serve as a compensated council member?

#### FACTS AND ANALYSIS

The water works board in question was formed in 1951 under the provisions of Act No. 175 of the 1951 Regular Session of the Alabama Legislature, now codified as §§ 11-50-310, et seq., Code of Alabama 1975.

Section 11-50-313 provides for the election of directors by the governing body of the municipality. The statute provides that any officer of the municipality is eligible to serve as a member of the board; however, the corporate charter may restrict this. Buffalow v. State, 1995 So.2d 692 (1967). The board may have three, five or seven members, depending upon the population of the municipality and the option of the municipal governing body.

For a three-member board, no more than two members may be officers of the municipality. For five- or seven-member boards, no more than three may be officers of the municipality. A municipal officer who serves on the board may receive a fee as established by the governing body of the municipality, within the limits set in § 11-50-313, provided it is first approved by the board of directors.

Under § 11-50-314(a)(12), the corporation has the power "[t]o appoint and employ such officers and agents, including attorneys, as its business may require; . . ." This would include the employment of a supervisor or superintendent. The title of such officers, agents and employees is entirely within the discretion of the board. Such an officer, agent or employee will receive compensation as established by the board. However, because the board is the appointing authority, a member of the board could not also be an employee of the board. We note that § 11-43-80 specifically authorizes a municipality which owns a utility system or a municipal board or public corporation which owns a

utility system to employ under certain circumstances the mayor as "superintendent," and this section specifies his duties and salary as such superintendent. We find no such authority for similar employment of council members. Accordingly, it is the opinion of this office that only the mayor may be designated or employed as the superintendent of utility.

#### CONCLUSION

In view of the foregoing discussion, the questions set forth above are, in the opinion of this office, due to be answered as follows:

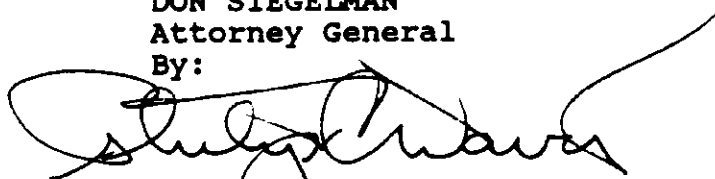
- (1) An elected officer of the city may be appointed to the board provided the corporate charter does not prohibit such an appointment, and further provided that there are not already two such officers on the board (three in the case of five- or seven-member boards).
- (2) There may be three to seven members of the board, depending upon the population of the municipality and decisions made by its governing body pursuant to § 11-50-313(a) and (b).
- (3) and (4) An elected member of the town council may not be appointed as "superintendent" or "supervisor" by the board, but the mayor may be employed as the superintendent of utilities under the circumstances set forth in § 11-43-80, Code.
- (5) While not specifically set forth in the statute, the board may select one of its members as its chairman, and such member may be an officer of the municipality; therefore, an officer of the municipality may serve as chairman of the board and receive the compensation provided for the chairman, within the limits set in § 11-50-313.
- (6) A council member receiving compensation as such may, as set forth in § 11-50-313, receive compensation as a member of the board.
- (7) One person may not serve as an employee of the board, a member of the board and member of the council and also receive compensation for each position.

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I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:

A handwritten signature in black ink, appearing to read "Philip C. Davis", written over the printed name and title.

PHILIP C. DAVIS  
Assistant Attorney General

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